IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 52 OF 2005

1. M/s.Collins & Co.,

2. Mr.Robin Shah. ... Petitioners.

V/s.

1. The Union of India,

2. The Deputy Director General of
Foreign Trade (Enforcement),

3. The Addl.Director General of
Foreign Trade,

4. The Tehsildar,
Government Dues Recovery,

5. The State of Maharashtra ... Respondents.

M.V.Jayakar i/b. M/s.Khaitan & Jayakar
for the petitioners.

Ms.S.I.Shah for respondent Nos.1 to 3.

Ms.M.Kajle, A.G.P. for respondent Nos.4 and 5.

CORAM : V.C.DAGA AND J.P.DEVADHAR, JJ.

DATED : 6th April 2005.

P.C. :

. Rule, returnable forthwith. Heard by consent of parties.

2. The petitioner No.1 is a partnership firm and carrying on business, inter alia; of manufacturing and export of watches under the brand name of "Bentex". During the course of

manufacturing activity, the petitioners applied for grant of two Advance Licences which were granted on 22nd July 1993 and 5th November, 1993 respectively. The said Advance Licences required the petitioners to export goods worth FOB value of Rs.36,00,400/- and Rs.56,00,700/- respectively. The export obligation was to be completed within a period of 12 months. The petitioners could not discharge this export obligation even though period to complete export obligation was extended from time to time, last being up to 30th June, 1995.

3. The respondent No.2 issued show cause notices dated 26th October, 1998 and 19th January, 2000 under section 14 for taking action under section 11(2) of the Foreign Trade (Development & Regulation) Act, 1992 ("said Act" for short).

4. The said show cause notices were replied by the petitioners contending that they had been regularly fulfilling their export obligations right from 1993, however, they could not fulfill their export obligations due to certain problems as faced by the entire watch industry in the country. The petitioners, alternatively, tried to justify non-fulfilment of export obligations contending that

if all the five licences are taken together, then, the petitioners have not only fulfilled their export obligation but effect excess exports.

5. The aforesaid explanation submitted by the petitioners did not find favour with respondent No.2. Ultimately, two orders dated 24th May, 2001 and 25th May, 2001 respectively; were passed in relation to both the licences referred to hereinabove; whereby respondent No.2 levied personal penalty on the petitioners in the sum of Rs.3,00,000/- and Rs.30,00,000/- respectively.

6. The petitioners being aggrieved by the aforesaid orders preferred two appeal before the Additional Director General of Foreign Trade ("Addl. DGFT" for short), the appellate authority under the said Act, respondent No.3 herein. Along with the said appeals the petitioners also moved applications for stay. The respondent No.3 refused to interfere with the orders passed by respondent No.2 and rejected both appeals.

7. The petitioners having failed in appeals preferred two separate applications in respective appeals for modification/review of the orders dated

17th February, 2004 passed by respondent No.3. In the said applications it was pleaded that non-appearance of the applicants or their authorised agent on 26th August, 2004 was on account of circumstances which were beyond the control of the petitioners, since certain tragic events leading to bomb blast had taken place in Mumbai. The said applications for modification of the orders in appeals also came to be rejected.

8. In order to effect recovery of outstanding dues, the provisions of the Land Revenue Code were resorted to whereby respondent No.4 called upon the petitioners to make payment as mentioned in the first impugned orders, confirmed by second impugned orders and went to the extent of threatening the petitioners that if the amounts are not paid, suitable action would be taken under section 267 of the Maharashtra Land Revenue Code.

9. Being aggrieved by the first and second impugned orders referred to hereinabove as well as notices issued by respondent No.4 coupled with notice of sale received from respondent No.4, the petitioners have invoked writ jurisdiction of this Court under Article 226 of the Constitution of India

to challenge the actions of the respective respondents.

10. The learned counsel appearing for the petitioners submitted that second impugned orders have, in fact, been passed ex-parte. According to him, the petitioners by letter dated 25th August, 2003 had already brought on record the reason for their non-appearance to the respondent No.3. He submits that respondent No.3 did not accept the sufficient cause shown by the petitioners for adjournment and proceeded to pass the impugned orders in breach of principles of natural justice.

11. It is further contended that respondent No.3 negatived the contention of the petitioners on the ground that the relevant shipping bills and DEEC books were not submitted. However, according to the petitioners, the relevant DEEC books had, in fact, been submitted in the office of respondent No.2 in Mumbai and that at any rate the petitioners were never called upon by respondent No.3 to produce any document in that behalf. The petitioners further submitted that reference to the failure on the part of the petitioners to deposit pre-deposit amount mentioned in the second impugned orders passed by

respondent No.3 is not in accordance with law and, therefore, in his submission, the impugned orders are based on extraneous material and suffers from non-application of mind.

12. Per contra, learned counsel appearing for the Revenue tried to support the impugned orders and contended that in spite of granting opportunity, the petitioners did not encash the same. It was submitted that the petitioners were requested to make pre-deposit of Rs.30 lakh and Rs.3 lakh of fiscal penalty amount, however, they failed to make such deposit. It was, thus, submitted that the appellate authority was perfectly justified in dismissing the appeals.

Consideration :
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13. Having heard rival parties, it is clear from the letter dated 19th October, 2001 written by the Foreign Trade Development Officer for and on behalf of DGFT that the petitioners were requested to send pre-deposit of Rs.30 lakh and Rs.3 lakh by way of penalty amount flowing from two orders towards fulfilment of export obligation. The petitioners were also asked to appear for personal hearing. The petitioners prayed for grant of personal hearing on

15th January, 2002 and 22nd January, 2002. Accordingly, petitioners were called upon to appear for personal hearing before the appellate authority on 5th March, 2002. However on the said date, the hearing came to be postponed at the instance of the Addl.DGFT. The another date of personal hearing was fixed on 2nd July, 2002. The petitioners sought adjournment vide their letter dated 1st July, 2002 on the ground that person appearing for hearing had become sick and was not in a position to appear for hearing. Consequently, again hearing was adjourned to 1st October, 2002. It appears that on 22nd October, 2002 the petitioners appeared before the DGFT at New Delhi and made their submission so far as pre-deposit is concerned.

14. The petitioners, again by order dated 19th June, 2003, were directed to make pre-deposit within 15 days from the date of receipt of the order. The petitioners vide their letter dated 2nd July, 2003 requested for waiver of pre-deposit of the fiscal penalty levied in the adjudication orders in both the appeals contending that there was no default on their part in discharging export obligations. The said request did not find favour with respondent No.3. In order to consider the appeal against the

same, date of hearing was fixed on 22nd November 2002. The petitioners appeared on the same date. It appears that on 25th August, 2003 the petitioners sent intimation to respondent No.3 informing therein that due to series of bomb blasts in Mumbai; it would not be possible for them to appear for personal hearing on 26th August, 2003. This prayer was rejected by respondent No.3. He proceeded to decide the matters ex-parte.

15. The aforesaid sequence of events would go to show that on 26th August, 2003 the petitioners could not have appeared before respondent No.3 for hearing since there was series of bomb blasts in Mumbai. This intimation was received by respondent No.3. It was expected on the part of respondent No.3 to grant one more adjournment to the petitioners as bomb blasts at Mumbai had become known to everybody in the country through electric media. The situation in the Mumbai during that particular period was such that nobody could have moved out. In that view, the petitioners had sufficient cause not to appear before respondent No.3. Therefore, rejection of request for adjournment by respondent No.3 is unsustainable in law as such order rejecting the said request is liable to be quashed and set aside.

As a consequence of this, the impugned orders referred to as second orders 17th February, 2004 are also liable to be quashed and set aside.

16. While setting aside the aforesaid orders, we are conscious of the fact that the petitioners had suffered orders of pre-deposit. This is clear from the fact that the petitioners vide their letter dated 2nd July, 2003 had requested for waiver of pre-deposit of fiscal penalties levied in both adjudication orders. In this view of the matter, simply setting aside the orders passed by respondent No.3 would not meet interest of justice unless the petitioners are directed to comply with the orders directing pre-deposits. The learned counsel for the petitioners at this stage submitted that the petitioners are willing to comply with the said orders. He, however, submits that considering the bad financial health of the petitioner company the petitioners may be permitted to deposit amount of pre-deposits by furnishing bank guarantees of any nationalised bank. In our opinion, considering the financial health of the petitioner company, it would be reasonable to permit the petitioners to comply with the orders of pre-deposit by furnishing bank guarantees in the sum of Rs.33 lakh.

17. In the result, the impugned orders both dated 17th February, 2004 passed by respondent No.3 are quashed and set aside subject to the petitioners' furnishing bank guarantee of any nationalised bank in the sum of Rs.33 lakh with respondent No.3 within a period of three weeks from today. In the event of furnishing the bank guarantee the appeals shall stand restored to the file of respondent No.3. Upon such restoration, respondent No.3 shall hear the appeals on its merits and pass appropriate orders in accordance with law following principles of natural justice. All rival contentions are kept open for being considered by respondent No.3. It is made clear that in the event petitioners fail to furnish bank guarantee as ordered herein, this petition shall be deemed to have been dismissed with costs quantified in the sum of Rs.10,000/-.

18. Petition stands disposed of in terms of the above order. Rule is, accordingly, made absolute with no order as to costs.

(J.P.Devadhar, J.) (V.C.Daga, J.)